IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN E. DAVIES Plaintiff, v. ECOGEN INC., NORTH AMERICAN SECURITY LIFE INSURANCE COMPANY, INTEGRITY LIFE INSURANCE CO., PAINE WEBBER INC., and LIFE USA Defendants.	:	CIVIL ACTION No. 98-288

MEMORANDUM-ORDER

Presently before this court is Defendant Ecogen Inc.'s Motion to Dismiss Plaintiff's Complaint or, in the Alternative to Dismiss and for Partial Stay. For the reasons set forth below, the motion will be granted in part and denied in part.

Factual Background

In his Complaint, Plaintiff alleges that Defendant Ecogen, Inc., ("Ecogen") owes him benefits pursuant to a Salary Reduction Deferred Compensation Agreement ("Agreement") (Comp. ¶ 10). Plaintiff and Ecogen entered into a contract whereby Plaintiff agreed to a salary reduction and deferral of certain compensation. Ecogen agreed to invest the deferred amounts on Plaintiff's behalf and pay him benefits in accordance with the terms of the Agreement. Ecogen invested the deferred amounts with Defendants North American Security Life Insurance Co., Integrity Life Insurance Co., Paine Webber Inc., and Life USA ("Insurers").

In December, 1997, Plaintiff informed Ecogen that he was retiring from the Board of Directors of Ecogen and requested that Ecogen pay him all amounts due him under the Agreement. Ecogen denied this request. Plaintiff then filed a complaint in the

Court of Common Pleas of Bucks County seeking specific performance of the contract and to enjoin Ecogen from receiving the proceeds invested under the Agreement. Because Plaintiff's claim arises under the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001 (1997) et seq., Ecogen removed this action to federal court in January, 1998.

The parties agree that this matter should be arbitrated.

The parties disagree, however, as to whether this action should be stayed pending arbitration. Ecogen contends that since the claims against the Insurers relate directly to the alleged benefit denial by Ecogen, these claims, like the claims against Ecogen, should also be submitted to arbitration. Since all claims are subject to arbitration, Ecogen argues, this action should be dismissed rather than stayed. Plaintiff contends that this action should be stayed pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 3 (1997), rather than dismissed. The Insurers have not entered an appearance, nor have they joined Ecogen in this motion.

Discussion

According to Section 3 of the FAA, a court, upon application of a party to an action, shall stay that action if it is satisfied that an issue in the case is referable to arbitration under the applicable written arbitration agreement. See Id.

In applying this section of the FAA, courts have typically granted stays when there are both arbitrable and non-arbitrable

claims in the same action and significant overlap exists between parties and issues. See Tenneco Resins, Inc., v. Davy Intern., 770 F. 2d 416 (5th Cir. 1985); American Home Assurance Co., v. Vecco Concrete Constr. Co., 629 F.2d 961 (4th Cir. 1980); Crawford v. West Jersey Health Systems, 847 F. Supp. 1232 (D.N.J. 1994).

In this case, Plaintiff alleges that he is a beneficiary under the contracts between Ecogen and the Insurers and he has been denied money to which he is legally entitled. Thus, Plaintiff's claims against the Insurers involve some of the same factual and legal issues as those against Ecogen. However, the claims against the Insurers also appear to involve some issues which may not be subject to the arbitration proceeding. The correct procedure, therefore, is to stay the claims against the Insurers pending arbitration of the claims against Ecogen.

Since the entire matter cannot be dismissed at this time, it is consistent with Section 3 of the FAA, to stay the entire matter pending arbitration. An appropriate order follows.